



**Linda S. Adams**  
*Secretary for  
Environmental  
Protection*

# California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control  
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment  
State Water Resources Control Board • Regional Water Quality Control Boards



**Arnold Schwarzenegger**  
*Governor*

Certified Mail: 7003 1680 0000 6174 7978

August 30, 2006

Deputy Chief James A. Williams  
Fire Marshal  
Oakland City Fire Department  
250 Frank H. Ogawa Plaza, Suite 3341  
Oakland, California 94612

Dear Deputy Chief Williams:

The California Environmental Protection Agency (Cal/EPA) and Department of Toxic Substances Control conducted a program evaluation of the City of Oakland's Certified Unified Program Agency (CUPA) on August 16, 2006. The evaluation was comprised of an in-office program review. The State evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff, which includes identified deficiencies, preliminary corrective actions, and timeframes. Two additional evaluation documents are the Program Observations and Recommendations and the Examples of Outstanding Program Implementation.

The enclosed Summary of Findings is now considered Final and based on review, I find that the City of Oakland's program performance is satisfactory with some improvement needed. To complete the evaluation process, please provide quarterly reports to Cal/EPA of your progress toward correcting the identified deficiencies, using the format provided below. Please submit your quarterly reports to JoAnn Jaschke. The first report of progress is due on November 30, 2006.

Cal/EPA also noted during this evaluation that the City of Oakland has worked to bring about a number of local program innovations, including: making improvements in its inspection and enforcement activities as well as updating the City of Oakland's data system to better monitor inspection needs, violations, and follow up. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

Deputy Chief James A. Williams  
August 30, 2006  
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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at [jbohon@calepa.ca.gov](mailto:jbohon@calepa.ca.gov).

Sincerely,

Don Johnson  
Assistant Secretary  
California Environmental Protection Agency

Enclosure

cc: Mr. Leroy Griffin, Assistant Fire Marshal (Sent Via Email)  
Oakland City Fire Department  
250 Frank H. Ogawa Plaza, Suite 3341  
Oakland, California 94612

Mr. Mickey Pierce (Sent Via Email)  
Department of Toxic Substances Control

Ms. JoAnn Jaschke (Sent Via Email)  
California Environmental Protection Agency

Mr. Kevin Graves (Sent Via Email)  
State Water Resources Control Board

Mr. Charles McLaughlin (Sent Via Email)  
Department of Toxic Substances Control

Ms. Vickie Sakamoto (Sent Via Email)  
Office of the State Fire Marshal

Mr. Moustafa Abou-Taleb (Sent Via Email)  
Governor's Office of Emergency Services

## **Deficiencies and Corrective Actions**

1. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

2. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

3. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

4. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

5. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

6. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

7. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

8. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here



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## **CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION** **SUMMARY OF FINDINGS**

**CUPA: City of Oakland Fire Department**

**Evaluation Date: August 16, 2006**

### **EVALUATION TEAM**

**Cal/EPA:** John Paine and JoAnn Jaschke

**DTSC:** Mickey Pierce

This Summary of Findings includes the deficiencies identified during the evaluation, observations and recommendations for program improvement, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to JoAnn Jaschke at (916) 323-2204.

	<b><u>Deficiency</u></b>	<b><u>Preliminary Corrective Action</u></b>
<b>1</b>	The CUPA is not remitting the state surcharge to the state within 30-days after the end of each fiscal quarter. The CUPA is submitting the total surcharge amounts within 30-days from the end of the last quarter of each fiscal year.  CCR, Title 27, Section 15250(b)(1)	By October 16, 2006, the CUPA will meet and confer with the City fiscal staff to develop a process to ensure the surcharge amounts collected in each fiscal quarter are remitted within 30-days from the end of the quarter. The CUPA will begin remitting the surcharge amounts collect in the 3 <sup>rd</sup> quarter of fiscal year 06/07.
<b>2</b>	The CUPA is not documenting actions taken by businesses to return to compliance with violations cited in Notices to Comply/Inspection Reports. Approximately half of the files reviewed that noted violations did not include any documentation that those violations are being corrected.  HSC, Chapter 6.5, Section 25187.8(h)	The CUPA shall immediately begin documenting compliance actions taken by a business in response to a notice to comply, or shall ensure that documentation is received from businesses. If the CUPA chooses to document the correction, the CUPA may either mark the original notice to comply with the correction and date confirmed during re-inspection or they may issue a new inspection report noting that each violation has been corrected.

Certified Unified Program Agency (CUPA)  
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<b>3</b>	<p>Inspection Reports issued by the CUPA do not include observations or other information in enough detail to determine if those items are violations, observations or suggestions. During the file review the following files were noted as having violations which were not adequately or properly documented:</p> <ul style="list-style-type: none"> <li>• The 1/17/06 Inspection Report for Oakland Auto Works notes only “obtain an EPA ID #” as a violation, and no NOV or additional information was seen in the file.</li> <li>• The 4/18/06 Inspection Report for Cleveland Steel Container notes only “address isopropyl drums”. Unclear if this is a violation or not, or if it applies to materials or wastes.</li> <li>• The 8/11/06 Inspection Report issued to Oakland Unified School District was based on the findings of one school, but intended for the entire district (multiple locations). The direction given in this report is not of sufficient detail to provide much meaning (e.g. proper manage all hazwaste: seal, clean, 2<sup>nd</sup> contain, label)</li> </ul> <p>HSC, Chapter 6.5, Section 25185(c)(2)(A)</p>	<p>By November 16, 2006, the CUPA shall ensure that all violations are clearly documented as violations, and that they include the basis of the violation, the facts surrounding the violation, and the corrective action to be taken.</p> <p>Those reports that contain both a field issued report and a typed “Notice of Violation” has much more clear language and is well documented.</p> <p>Additionally relevant observations including suggestions, paperwork reviewed and changes to facility operations should be included to create a complete report.</p>
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**CUPA Representative**

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**Evaluation Team Leader**

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

**PROGRAM OBSERVATIONS AND RECOMMENDATIONS**

1. **Observation:** CUPA is submitting Summary Report 5, Biennial Tiered Permitting Release Report.

**Recommendation:** The CUPA is no longer required to submit this report to the state.

2. **Observation:** The CUPA's various enforcement options are contained in two documents: the Unified Inspection and Enforcement Plan and the AEO and Hearing Procedure binder.

**Recommendation:** Cal/EPA recommends that the CUPA consolidate their AEO procedures into their one document by incorporating it into the Unified Inspection and Enforcement Plan. Consolidating the two procedures/binders will not only ensure consistency but ease the update process.

3. **Observation:** Facility to inspector ratio is quite high. Each of the district inspectors are assigned approximately 500 businesses.

**Recommendation:** Cal/EPA recommends that the CUPA work to lower this facility to inspector ratio, which would allow more flexibility of staff and to focus resources on the greatest need.

4. **Observation:** Full staffing obtained – according to original application. CUPA has also recently been authorized to hire an additional staff member, based on current work load. In addition, the CUPA is planning to hire professional staff (geologist) to handle site assessment work. Additional work, outside the scope of the UP, will be a challenge for the CUPA in the future.

5. **Observation:** The CUPAs field issued inspection reports often contain very few observations not related to any violations found during the inspection. The CUPA has indicated that it is examining using a Personal Digital Assistant device (PDA) linked to field printers to assist with this.

**Recommendation:** The CUPA should remind its inspectors that observations are an integral part of inspection reports. Notes as simple as the types of documents reviewed, general facility status, and information related to compliant areas should be included.

6. **Observation:** The information provided by the CUPA in Reports 3 and 4 (Annual Inspection and Enforcement Summary Reports) contains data which may be misleading. Examples include conduction more routine inspections than no. of regulated businesses inspected, and a sum total of \$15,406.97 in penalties collected from 20 formal enforcement actions.

**Recommendation:** Discussions regarding the expectations for data reporting were held during the evaluation. Change to CUPA DMS reporting system and clarification of the State's wants and needs with respect to the data should resolve this problem.

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7. **Observation:** The following files that were reviewed contained information that the CUPA may want to examine more closely:
- a. Camco (641 E. 10<sup>th</sup> St) has no information in the file since 1996, but the facility tracking sheet provided in the file room shows the facility as active, and that the operator of the facility is L&L Auto.
  - b. InstaLube (7805 E. 14<sup>th</sup> St) has no information in the file since 1996, but the facility tracking sheet provided in the file room shows the facility as active.
  - c. Advanced Radiologic Imaging (411 30<sup>th</sup> St) files notes that the facility is now Quest Communications as of August 4, 2006 inspection. The report does not discuss the status of Quest or if the new facility is subject to the Unified Program.
  - d. Seven Eleven Body Shop (645 E. 11<sup>th</sup> St) did not have an inspection report on file since August 30, 2001, but did contain a newly submitted tiered permit dated August 14, 2006. Additionally, the tiered permit and information found in inspection reports from 2001 and 2000 show that the facility is recycling which may exempt them from the need to have a tiered permit.
  - e. Gold Seal Plating (3125 E. 7<sup>th</sup> St) has notified under Tiered Permitting as 4 PBR units. According to the notification, each of the processing units is operating in series with the other units. The definition of a “tank system” includes a series of tanks, and as such Gold Seal may only need to notify for 1 PBR unit with 4 tanks in its system. Additionally, the closure cost estimate for the system has not been updated for inflation or depreciation of equipment value annually, as the total amount has not changed since 2003.

**Recommendation:** The CUPA may want to look at these files to examine if the missing information is due to lack of filing or needs to be addressed.

8. **Observation:** The number of RCRA LQGs reported by the CUPA was based on a list of 2003 manifest data provided to the CUPA by the State.

**Recommendation:** Please re-examine the universe based on the 2005 information proved during the evaluation. Additionally, DTSC and U.S. EPA would like the CUPA to report every quarter the number of RCRA LQG inspections conducted in that quarter (if none, please report that no inspections were conducted).

9. **Observation:** The CUPA’s field inspection report and checklist do not have space to mark that a facility is a RCRA LQG, LQG, SQG, or CESQG. While this information is not required, it is a good place to start in looking for which regulations are applicable and it makes reporting the information regarding RCRA LQGs.

**Recommendation:** The CUPA may want to modify its inspection report to include check boxes for marking this information for easy reference.

10. **Observation:** The CUPA’s enforcement files do include both SEPs and penalties. Files do not include any documentation of how the penalty was determined. If this information is shared with counsel, it is subject to Attorney-Client Privilege.

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**Recommendation:** Include how the penalty amount was originally arrived at in the file along with the final documentation of the enforcement settlement.

**11. Observation:** The following is a non-exhaustive list of enforcement cases settled by the Oakland City CUPA in the past fiscal year (04-05):

- Administrative demand letter for violations of the HMBP, HW, Storm Water (SW) and Fire Code resulting in \$1,721 in penalty.
- Administrative demand letter for violations of the HMBP, HW, SW and Fire Code resulting in \$1,557 in penalty
- Administrative demand letter for violations of the HMBP, HW, SW and Fire Code resulting in \$1,377 in penalty
- AEO- Show Cause for violations of the HMBP, HWG and SW programs resulting in a \$769.31 penalty
- AEO- Show Cause for violations of the HMBP, HWG and SW programs resulting in a \$329 penalty
- AEO- Show Cause for violations of the HMBP, HWG and SW programs resulting in a \$1,377 penalty
- AEO- Consent Order for violations of the HMBP, HWM, UST, Fire Code and SW programs resulting in a \$1,329.31 penalty
- AEO- Unilateral Order for violations of the HMBP, HWG, and SW programs resulting in a \$10,000 penalty
- Cease and Desist Order for violations of the HMBP and Cal ARP resulting in a referral to the District Attorney's Office (Active case as of 8/16/06)



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**EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION**

1. The CUPA's Self-Audit Report is very thorough and includes all required elements, clearly and concisely addressing their activities during the reporting year. In addition, the CUPA manager uses the Self-Audit Reports as a guide to develop semi-annual Unified Program status reports to the City of Oakland Emergency Management Board and the City Council.
2. The CUPA has made great strides in improving its inspection and enforcement program based on those prior deficiencies documented in the Program Improvement Agreement. Examples of this were seen in the number and types of enforcement actions taken, the field standardization efforts (including supervisory oversight inspections, routine check of file information, and use of staff to spot check other staff work), and the development and use of office issued Notice to Comply and Notice of Violation documents which contain clearly documented violations. To ensure consistency, a uniform form is used by all inspectors for all programs. All inspectors are also mandated to attend training on program updates. The CUPA manager also verifies inspector performance by reviewing adhoc reports from their data system to ensure all inspectors are adequately classifying violations. Periodically, the CUPA manager accompanies the inspectors (unannounced) to observe their performance. Consistency is also verified during these oversight inspections by the CUPA manager. The high hazard facilities are inspected on a more frequent basis. Inspectors are assigned to districts and cover all program elements. Enforcement policy has been amended, CUPA staff trained on policy, helped to significantly improved program compliance. Pre-enforcement hearings have been very helpful and resulting in settlements. The AEO process is the primary process for handling enforcement, including appeals. Due to the CUPA's inspection and enforcement program, the number of accidental releases of Hazmat has significantly reduced. CUPA has developed an AEO and Hearing procedure binder that defines formal enforcement, AEO Enforcement, Minor violations, SEPs, Hazardous Waste Program violations, UST program significant violations, and other key terms related to the Unified Program. The binder outlines the roles and responsibilities of the CUPA and City Counsel, order issuance and settlement authorities, assignment of tracking numbers, and internal review and approval. The binder also includes the process of issuing AEOs and settlements, penalty maximums and calculations, cost recovery, case closure procedures and procedures for non-compliance with orders.
3. The CUPA's data system was recently updated. The CUPA manager uses adhoc reports to manage the Unified Program. Inspectors also use the adhoc reports to track inspection needs and follow up activities for violations noted during recent inspections. The adhoc reports include, for example, tracking of Notice of Violations, number of hours each inspector is spending on inspection activities, Programs with Last Inspections, and overdue inspections. Data system enhancements have also allowed the CUPA to refine program costs by tracking time specific elements more closely. This is accomplished by daily activity entries by inspectors.
4. To improve the consistent delivery of services, the City recently consolidated two organizational units into one unit under the City Fire Prevention Bureau. There is now a single permit for all UP elements and all fire code storage requirements – help to reduce conflict between the fire code and UP. CUPA inspectors now cover fire code storage (HM) aspect. Regulation and compliance of Businesses handling hazmat are now covered by one inspection performed by one inspector.

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This has resulted in overall improvement in customer services and, in general, happier customers. Additionally, a single invoice, covering all UP and Fire Code elements, is now being implemented.

5. Coordination with other City Departments is continuously improving. Site referral forms have been developed and implemented for case referrals among various programs and departments within the City.
6. The CUPA is doing good job of following-up on, documenting the findings of complaints referred by DTSC.
7. The CUPA's count of regulated businesses is very close to the count of active EPA ID numbers obtained from DTSC's Hazardous Waste Tracking System (HWTS). The CUPA has reported an average universe size of 960 generators, while HWTS indicates 1048 active ID numbers (91% of expected).
8. Since the last evaluation the CUPA has made great strides in improving their overall administration and implementation of the Unified Program in the City of Oakland. The Program Improvement Agreement from their prior evaluation was used as their guide for these improvements. All of the elements of the agreement have been corrected as planned.